

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SAUL FARVELA,

Plaintiff,

v.

MATOUSEK, *et al.*,

Defendants.

Case No. 2:21-cv-01720-CDS-DJA

ORDER DISMISSING AND
CLOSING CASE

Plaintiff Saul Farvela brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. (ECF No. 11). On March 11, 2022, this Court screened Plaintiff's Complaint, dismissed one of his claims with prejudice and the remaining claims with leave to amend, and ordered him to file an amended complaint by April 11, 2022. (ECF No. 10). The Court warned Plaintiff that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.* at 12-13). That deadline expired and Plaintiff did not file an amended complaint, move for an extension, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets, and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their

1 merits; and (5) the availability of less drastic alternatives. See *In re Phenylpropanolamine Prod. Liab.*
2 *Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th
3 Cir. 1987)).

4 The first two factors, the public's interest in expeditiously resolving this litigation and the
5 Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's claims. The third
6 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of
7 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
8 or prosecuting an action. See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
9 factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by
10 the factors favoring dismissal.

11 The fifth factor requires the Court to consider whether less drastic alternatives can be used
12 to correct the party's failure that brought about the Court's need to consider dismissal. See *Yourish*
13 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
14 alternatives *before* the party has disobeyed a court order does not satisfy this factor); accord
15 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive force
16 of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives prior to
17 disobedience of the court's order as satisfying this element[,]” *i.e.*, like the “initial granting of leave
18 to amend coupled with the warning of dismissal for failure to comply[,]” have been “eroded” by
19 *Yourish*). Courts “need not exhaust every sanction short of dismissal before finally dismissing a
20 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421,
21 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and unless Plaintiff files
22 an amended complaint, the only alternative is to enter a second order setting another deadline.
23 But the reality of repeating an ignored order is that it often only delays the inevitable and
24 squanders the Court's finite resources. The circumstances here do not indicate that this case will
25 be an exception: there is no hint that Plaintiff needs additional time or evidence that he did not
26 receive the Court's screening order. Setting another deadline is not a meaningful alternative given
27 these circumstances. So the fifth factor favors dismissal.
28


1 II. CONCLUSION

2 Having thoroughly considered these dismissal factors, the Court finds that they weigh in
3 favor of dismissal. It is therefore ordered that this action is dismissed without prejudice based on
4 Plaintiff's failure to file an amended complaint in compliance with this Court's March 11, 2022
5 order, and for failure to state a claim. The Clerk of Court is directed to enter judgment accordingly
6 and close this case. No other documents may be filed in this now-closed case. If Plaintiff wishes
7 to pursue his claims, he must file a complaint in a new case.

8 It is further ordered that the application to proceed *in forma pauperis* without having to
9 prepay the filing fee (ECF No. 9) is **GRANTED**. Plaintiff need not pay an initial installment fee,
10 prepay fees or costs, or provide security for fees or costs, but he is still required to pay the full \$350
11 filing fee under 28 U.S.C. § 1915, as amended. This full filing fee remains due and owing even
12 though this case is being dismissed.

13 In order to ensure that Plaintiff pays that filing fee, it is further ordered that the Nevada
14 Department of Corrections must forward payments from the account of Saul Farvela, #1096329
15 to the Clerk of the United States District Court, District of Nevada, 20% of the preceding month's
16 deposits (in months that the account exceeds \$10.00) until the full \$350 filing fee has been paid
17 for this action. The Clerk is directed to SEND copies of this order to the Finance Division of the
18 Clerk's Office and to the attention of **Chief of Inmate Services for the Nevada Department of**
19 **Corrections**, P.O. Box 7011, Carson City, NV 89702.

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21 DATED THIS 20th day of April 2022.

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25 UNITED STATES DISTRICT JUDGE
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